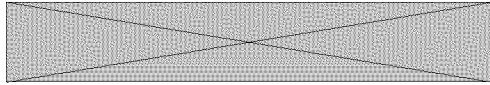


To: Wirtschafter, Joshua[Wirtschafter.Joshua@epa.gov]
From: Noah Perch-Ahern
Sent: Tue 3/29/2016 12:19:57 AM
Subject: RE: Subpoena to Burleson
removed.txt

.....
>>>>>>

Hello Josh, just wanted to follow-up on this and the FOIA request. Just checking on timing and if you wanted to chat. Thanks, -Noah



Noah Perch-Ahern | Partner

10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067

Main: 310.553.3000 | Direct: 310.556.7842 | Fax: 310.556.2642

E-Mail: nperchahern@glaserweil.com | www.glaserweil.com



This message and any attached documents may contain information from the law firm of Glaser Weil Fink Howard Avchen & Shapiro LLP that is confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

From: Noah Perch-Ahern
Sent: Friday, March 25, 2016 3:57 PM
To: 'Wirtschafter, Joshua'
Subject: Subpoena to Burleson

Hi Josh,

Per my earlier promise, here's some authority for the general proposition that a contractual agreement doesn't create a privilege or shield documents from disclosure in litigation.

o *Board of Trustees of Leland Stanford Junior Univ. v. Tyco Int'l Ltd.*, 253 F.R.D. 521 (C.D. Cal. 2008) ("Moreover, 'the simple fact that the parties to the settlement agreement agreed to its confidentiality does not shield it from discovery.'") (citation omitted).

o *In re C.R. Bard, Inc. Pelvic Repair Sys. Prods. Liab. Litig.*, 287 F.R.D. 377 (S.D. W. Va. 2012) ("There is no privilege for documents merely because they are subject to a confidentiality agreement, and confidentiality agreements do not necessarily bar discovery that is otherwise permissible and relevant.") (citations omitted).

o *DIRECTV, Inc. v. Puccinelli*, 224 F.R.D. 677, 685 (D. Kan. 2004) ("Simply put, litigants may not shield otherwise discoverable information from disclosure to others merely by agreeing to maintain its confidentiality.").

o *Dow Jones Co. v. FERC*, 219 F.R.D. 167, 178 (C.D. Cal. 2003) (“Agreements for confidentiality, standing alone, are insufficient to satisfy the requirements needed for nondisclosure under Exemption 4 [of FOIA].”).

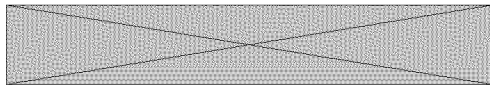
o *Grumman Aerospace Corp. v. Titanium Metals Corp. of Am.*, 91 F.R.D. 84, 87 (E.D.N.Y. 1981) (“By themselves, the confidentiality agreements entered into by Nathan, DOD [Department of Defense], RMI and TMCA do not immunize the Nathan report or other materials from discovery.”).

I hope this addresses your concern.

Of course, I know you may have some specifically applicable privileges as to certain documents. As we discussed, my point is that the non-privileged documents in Burleson’s file should be produced. Can we chat about this? I want to make sure I’m addressing your questions and concerns, and I’m hoping to get the documents next week if possible.

Many thanks,

Noah



Noah Perch-Ahern | Partner

10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067

Main: 310.553.3000 | Direct: 310.556.7842 | Fax: 310.556.2642

E-Mail: nperchahern@glaserweil.com | www.glaserweil.com



This message and any attached documents may contain information from the law firm of Glaser Weil Fink Howard Avchen & Shapiro LLP that is confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.